

HOUSE BILL NO. 785

INTRODUCED BY J. COHENOUR

A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING THAT STATE AGENCIES PROVIDE FOR AND ENSURE THE SECURITY OF CONFIDENTIAL INFORMATION COMPILED OR MAINTAINED BY THE STATE; REQUIRING STATE CONTRACTS TO INCLUDE PROVISIONS THAT ENSURE THE SECURITY OF CONFIDENTIAL INFORMATION COMPILED OR MAINTAINED BY THE STATE; ESTABLISHING PENALTIES FOR VIOLATING CONTRACT PROVISIONS THAT ENSURE THE SECURITY OF CONFIDENTIAL INFORMATION COMPILED OR MAINTAINED BY THE STATE; APPROPRIATING FUNDS TO ENSURE THAT ALL CONFIDENTIAL INFORMATION COMPILED OR MAINTAINED BY THE STATE IS PROTECTED FROM ILLEGAL ACCESS AND DISTRIBUTION; AMENDING SECTIONS 2-15-114, 2-17-512, 2-17-516, AND 2-17-524, MCA; AND PROVIDING AN EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Security of confidential information -- penalty.** (1) Every contract in which a vendor provides services that will require or allow an employee of the vendor to work in a capacity in which the employee will have access to areas, equipment, software, or information that could allow direct or indirect access to confidential information in the state's possession must include a provision that the employee is subject to the same confidentiality requirements to which employees of the department are subject.

(2) The confidentiality requirements include but are not limited to:

- (a) information that is protected under Article II, sections 9 and 10, of the Montana constitution;
- (b) the rules of conduct for public employees provided for in 2-2-104;
- (c) the security responsibilities of departments provided for in 2-15-114;
- (d) information protected under the Health Insurance Portability and Accountability Act of 1996, 42 U.S.C. 1320d, et seq.; and
- (e) information that the legislature has statutorily declared to be confidential.

(3) A person who violates the confidentiality provisions of a contract required under this section is subject to the administrative penalties provided for in 2-2-136(2), to cancellation of the contract at the department's discretion, and to any other civil or criminal penalty allowed by law.

1

2 **Section 2.** Section 2-15-114, MCA, is amended to read:

3 **"2-15-114. Security responsibilities of departments for data.** Each department head is responsible for
4 ensuring an adequate level of security for all data within that department and shall:

5 (1) develop and maintain written internal policies and procedures to ensure security of data. The policies
6 and procedures must describe specifically the manner in which the department will secure confidential information,
7 as described in [section 1(2)], from illegal access and distribution. The internal policies and procedures are
8 confidential information and exempt from public inspection, except that the information must be available to the
9 legislative auditor in performing postauditing duties.

10 (2) designate an information security manager to administer the department's security program for data;

11 (3) implement appropriate cost-effective safeguards to reduce, eliminate, or recover from identified threats
12 to data;

13 (4) ensure that internal evaluations of the security program for data are conducted. The results of the
14 internal evaluations are confidential and exempt from public inspection, except that the information must be available
15 to the legislative auditor in performing postauditing duties.

16 (5) include appropriate security requirements, as determined by the department, in the written
17 specifications for the department's solicitation of data and information technology resources; and

18 (6) include a general description of the existing security program and future plans for ensuring security of
19 data in the agency information technology plan as provided for in 2-17-523."

20

21 **Section 3.** Section 2-17-512, MCA, is amended to read:

22 **"2-17-512. Powers and duties of department.** (1) The department is responsible for carrying out the
23 planning and program responsibilities for information technology for state government, except the national guard.
24 The department:

25 (a) shall encourage and foster the development of new and innovative information technology within state
26 government;

27 (b) shall promote, coordinate, and approve the development and sharing of shared information technology
28 application software, management systems, and information that provide similar functions for multiple state
29 agencies;

30 (c) shall cooperate with the office of economic development to promote economic development initiatives

1 based on information technology;

2 (d) shall establish and enforce a state strategic information technology plan as provided for in 2-17-521;

3 (e) shall establish and enforce statewide information technology policies and standards;

4 (f) shall review and approve state agency information technology plans provided for in 2-17-523;

5 (g) shall coordinate with the office of budget and program planning to evaluate budget requests that include
6 information technology resources. The department shall make recommendations to the office of budget and program
7 planning for the approval or disapproval of information technology budget requests, including an estimate of the
8 useful life of the asset proposed for purchase and whether the amount should be expensed or capitalized, based
9 on state accounting policy established by the department. An unfavorable recommendation must be based on a
10 determination that the request is not provided for in the approved agency information technology plan provided for
11 in 2-17-523.

12 (h) shall staff the information technology board provided for in 2-15-1021;

13 (i) shall fund the administrative costs of the information technology board provided for in 2-15-1021;

14 (j) shall review the use of information technology resources for all state agencies;

15 (k) shall review and approve state agency specifications and procurement methods for the acquisition of
16 information technology resources;

17 (l) shall review, approve, and sign all state agency contracts and shall review and approve other formal
18 agreements for information technology resources provided by the private sector and other government entities; The
19 department may not approve or sign a contract that does not comply with the provisions of [section 1].

20 (m) shall operate and maintain a central computer center for the use of state government, political
21 subdivisions, and other participating entities under terms and conditions established by the department;

22 (n) shall operate and maintain a statewide telecommunications network for the use of state government,
23 political subdivisions, and other participating entities under terms and conditions established by the department;

24 (o) shall ensure that the statewide telecommunications network is properly maintained. The department
25 may establish a centralized maintenance program for the statewide telecommunications network.

26 (p) shall coordinate public safety communications on behalf of all state agencies as provided for in 2-17-541
27 through 2-17-543;

28 (q) shall manage the state 9-1-1 program as provided for in Title 10, chapter 4, part 3;

29 (r) shall provide electronic access to information and services of the state as provided for in 2-17-532;

30 (s) shall provide assistance to the legislature, the judiciary, the governor, and state agencies relative to

1 state and interstate information technology matters;

2 (t) shall establish rates and other charges for services provided by the department;

3 (u) must accept federal funds granted by congress or by executive order and gifts, grants, and donations
4 for any purpose of this section;

5 (v) shall dispose of personal property owned by it in a manner provided by law when, in the judgment of
6 the department, the disposal best promotes the purposes for which the department is established;

7 (w) shall implement this part and all other laws for the use of information technology in state government;

8 (x) shall report to the appropriate interim committee on a regular basis and to the legislature as provided
9 in 5-11-210 on the information technology activities of the department; ~~and~~

10 (y) shall represent the state with public and private entities on matters of information technology; and

11 (z) shall ensure that all confidential information, as described in [section 1(2)], that is compiled or
12 maintained by the state in a database within the purview of the department is protected from illegal access and
13 distribution.

14 (2) If it is in the state's best interest, the department may contract with qualified private organizations,
15 foundations, or individuals to carry out the purposes of this section.

16 (3) The director of the department shall appoint the chief information officer to assist in carrying out the
17 department's information technology duties."

18
19 **Section 4.** Section 2-17-516, MCA, is amended to read:

20 **"2-17-516. Exemptions -- university system -- office of public instruction -- national guard.** (1) Unless
21 the proposed activities would detrimentally affect the operation of the central computer center or the statewide
22 telecommunications network, the office of public instruction is exempt from 2-17-512(1)(k) and (1)(l).

23 (2) Unless the proposed activities would detrimentally affect the operation of the central computer center
24 or the statewide telecommunications network, the university system is exempt from:

25 (a) the enforcement provisions of 2-17-512(1)(d) and (1)(e) and 2-17-514;

26 (b) the approval provisions of 2-17-512(1)(f), 2-17-523, and 2-17-527;

27 (c) the budget approval provisions of 2-17-512(1)(g);

28 (d) the provisions of 2-17-512(1)(k) and (1)(l); and

29 (e) the transfer provisions of 2-17-531.

30 (3) The department, upon notification of proposed activities by the university system or the office of public

instruction, shall determine if the central computer center or the statewide telecommunications network would be detrimentally affected by the proposed activity.

(4) For purposes of this section, a proposed activity affects the operation of the central computer center or the statewide telecommunications network if it detrimentally affects the processing workload, reliability, cost of providing service, or support service requirements of the central computer center or the statewide telecommunications network.

(5) When reviewing proposed activities of the university system, the department shall consider and make reasonable allowances for the unique educational needs and characteristics and the welfare of the university system as determined by the board of regents.

(6) When reviewing proposed activities of the office of public instruction, the department shall consider and make reasonable allowances for the unique educational needs and characteristics of the office of public instruction to communicate and share data with school districts.

(7) Section 2-17-512(1)(u) may not be construed to prohibit the university system from accepting federal funds or gifts, grants, or donations related to information technology or telecommunications.

(8) ~~(a) The~~ Except as provided in subsection (8)(b), the national guard, as defined in 10-1-101(3), is exempt from 2-17-512.

(b) The national guard is subject to the provisions of 2-17-512(1)(z)."

Section 5. Section 2-17-524, MCA, is amended to read:

"2-17-524. Agency information technology plans -- form and content -- performance reports. (1)

Each agency's information technology plan must include but is not limited to the following:

(a) a statement of the agency's mission, goals, and objectives for information technology, including a discussion of how the agency uses or plans to use information technology to provide mission-critical services to Montana citizens and businesses;

(b) an explanation of how the agency's mission, goals, and objectives for information technology support and conform to the state strategic information technology plan required in 2-17-521;

(c) a general description of the manner in which the agency will secure confidential information, as described in [section 1(2)], from illegal access and distribution;

~~(e)(d)~~ a baseline profile of the agency's current information technology resources and capabilities that:

(i) includes sufficient information to fully support state-level review and approval activities; and

(ii) will serve as the basis for subsequent planning and performance measures;

~~(d)(e)~~ an evaluation of the baseline profile that identifies real or potential deficiencies or obsolescence of the agency's information technology resources and capabilities;

~~(e)(f)~~ a list of new projects and resources required to meet the objectives of the agency's information technology plan. The investment required for the new projects and resources must be developed using life-cycle cost analysis, including the initial investment, maintenance, and replacement costs, and must fulfill or support an agency's business requirements.

~~(f)(g)~~ when feasible, estimated schedules and funding required to implement identified projects; and

~~(g)(h)~~ any other information required by law or requested by the department, the governor, or the legislature.

(2) Each agency's information technology plan must project activities and costs over a 6-year time period, consisting of the biennium during which the plan is written or updated and the 2 subsequent bienniums.

(3) Each agency shall prepare and submit to the department a biennial performance report that evaluates progress toward the objectives articulated in its information technology plan. The report must include:

(a) an evaluation of the agency's performance relating to information technology;

(b) an assessment of progress made toward implementing the agency information technology plan; and

(c) an inventory of agency information services, equipment, and proprietary software.

(4) State agencies shall prepare agency information technology plans and biennial performance reports using standards, elements, forms, and formats specified by the department."

NEW SECTION. Section 6. Appropriation. There is appropriated \$1,000 for the biennium from the general fund to the department of administration to contract for legal services to review contracts to ensure that all confidential information, as described in [section 1(2)], that is compiled or maintained by the state is protected from illegal access and distribution.

NEW SECTION. Section 7. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 18, chapter 1, part 1, and the provisions of Title 18, chapter 1, part 1, apply to [section 1].

NEW SECTION. Section 8. Effective date. [This act] is effective July 1, 2005.

- END -